HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.581 of 2025

Danish Malik .....Appellant

Versus

State of Uttarakhand .....Respondent

Presence:-
Mr. C.K. Sharma, Advocate for the appellant.
Mr. B.N. Molakhi, learned Deputy Advocate General with Mr. Jayvardhan Kandpal, S.C. for the State.

Coram :Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Hon'ble Pankaj Purohit, J. (Oral)

This criminal appeal is directed against the judgment and order dated 17.09.2025, passed by learned Special Judge (U.A.P.A.)/Ist Additional Sessions Judge, Haldwani, District Nainital in FIR No.21 of 2024, registered at Police Station Banbhoolpura, District Nainital under Sections 147, 148, 149, 307, 323, 332, 341, 342, 353, 395, 427, 436, 333 412, 120-B IPC, r/w Section 7 of the Criminal Law Amendment Act, 1932, r/w Sections 3/4 of the Prevention of Damage to Public Property Act, 1984, r/w Sections 15/16 of the U.A.P.A., r/w Section 7/25 of The Arms Act, whereby, the learned trial court has rejected the Bail Application No.228 of 2025 filed by the appellant.

2. Facts of the case giving rise to the present proceedings are that an FIR No.21 of 2024 dated 08.02.2024 was lodged in Police Station Banbhoolpura, District Nainital. As per the aforesaid FIR, on 08.02.2024 officials from Nagar Nigam, Tehsil and Police went to a place in Banbhoolpura locality to demolish two

structures allegedly encroachments on public land – one Madarsa and one Mosque, which was already sealed and fenced. When officials reached the spot they faced resistance from the local public, who formed a mob and started pelting stones at the officials and petrol bombs were also thrown in the process. During this process Police officials also rushed to the Police Station Banbhoolpura after receiving of reports that some persons attempted to set the police station on fire; petrol bombs were thrown on the Police vehicle and the service pistols and cartridges of Police officials S.O. Mukhani were also snatched.

3. It is admitted that the provisions of Section 15/16 of the Unlawful Activities (Prevention) Act, 1967 were invoked subsequently during investigation against the appellant/applicant and other persons who have been arrested during investigation. The name of the appellant/applicant was not mentioned in the FIR. He was arrested on 17.02.2024, on asking of Samir-injured who recognized the appellant/applicant in the light of flames among the people who were pelting stones and setting fire to bottles filled with petrol and firing from guns, and from his possession PAC's looted magazine with cartridges were recovered.

4. The Bail Application No.228 of 2025 of the appellant/applicant was rejected vide order dated 17.09.2025 by the learned Special Judge (U.A.P.A.)/Ist Additional Sessions Judge, Haldwani, District Nainital in FIR No.21 of 2024, registered at Police Station Banbhoolpura, District Nainital under Sections 147, 148, 149, 307, 323, 332, 341, 342, 353, 395, 427, 436, 333 412, 120-B IPC, r/w Section 7 of the Criminal Law Amendment Act, 1932, r/w Sections 3/4 of the

Prevention of Damage to Public Property Act, 1984, r/w Sections 15/16 of the U.A.P.A., r/w Section 7/25 of The Arms Act. Feeling aggrieved by aforesaid impugned order, appellant/applicant has preferred the present appeal.

5. The objection to the bail application was called from the State. Delay in filing the objection is condoned for the reasons stated in the affidavit. Delay condonation application (IA/2/2025) made therefor, stands disposed of. Objection filed on behalf of the State is taken on record.

6. The State in its objection opposed the bail application by stating that the appellant/applicant was involved in the serious offence of rioting, arsoning and violence that too with the officers of the administration and police. It has also been stated that on his pointing out 4 live cartridges were recovered from his house. Constable Manoj Rana, proved that S.L.R. magazine with 10 live cartridges were looted from him. S.I. Manoj Yadav and Head Constable Kapoor Singh Rana are the witnesses of recovery. Constable Parvez Ali also proved his involvement; the illegal arms and petrol bombs were stored under a well planned conspiracy and public officers were attacked with the intention of killing them by using petrol bombs etc. by demonstrating criminal force. The State further contested that the criminal activities done by the appellant/applicant falls within the definition of “terroristic attack” with the purpose of creating terror among the people and the attack caused by the crowd of which the appellant/applicant was part of, caused irreparable damaged to the property of nation and it created fear in the mind of general public. Therefore, offence is made out against the appellant/applicant.

7. It is further submitted by the State that after completion of the investigation, the investigating officer has filed a charge-sheet against the appellant/applicant before the court concerned.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel for the appellant/applicant submitted that appellant/applicant was not named in the FIR; he has falsely been implicated with the incident; he has no concern with the alleged violence rioting and arsoning. He further submitted that there is no concrete evidence with the prosecution to connect the appellant/applicant with the incident happened on 08.02.2024 at Malik-Ka- Bagicha in Haldwani. He further submitted that the appellant/applicant is under incarceration since 17.02.2024 and has no criminal history. But the role assigned to appellant/applicant is of firing bullets, pelting stones and arsoning with others named in the statement of Samir, and, therefore, he is entitled to be released on bail by this Court after setting aside the judgment and order impugned. He further submitted that without collecting any credible evidence like CCTV footages, mobile call details and location against the appellant/applicant and merely on the basis of statement of Samir by indicating that he too was involved in stone pelting and arsoning, he cannot be nailed as he was resident of the area. It was also argued that the recovery of 4 live cartridges is also false and concocted.

10. *Per contra*, the learned Deputy Advocate General for the State strongly opposed the appeal and the grant of bail to the appellant/applicant. He also relied upon the statement of witnesses-Constable Manoj Rana,

S.I. Manoj Yadav, Head Constable Kapoor Singh Rana and Constable Parvez Ali recorded under Section 161 to nail the appellant/applicant with the alleged crime and offences. He further submitted that though he has not been named in the FIR because the FIR was against unknown persons, but his name was figured during investigation and from possession of appellant/applicant, PAC's looted magazines with cartridges were recovered.

11. We have perused the record of the case and the statements recorded under Section 161 Cr.P.C. of Samirinjured (independent witness), S.I. Manoj Yadav, Constable 6617 P.A.C. Manoj Rana, Head Constable Kapoor Singh Rana and Constable Parvez Ali. In statement under Section 161 Cr.P.C, there is mention of the name of appellant/applicant who was shown to have pelting stones and looted S.L.R. magazine 10 live cartridges (7.62 mm). As stated above, he was implicated with the crime by these witnesses and 4 live cartridges were said to have been recovered from his house on his pointing out.

12. Having considered the submissions of both the learned counsel for the parties and having gone through the record of the case, this Court is of the view that there is no direct evidence against the appellant/applicant. The prosecution could not tell us as to what active role would be attributed to the appellant/applicant. So far no direct evidence is there against him. It is also in the mind of this Court since the appellant/applicant has already spent more than one year ten months in custody in connection with the aforesaid alleged FIR, he is entitled to be released on bail.

13. Accordingly, the present criminal appeal is allowed. The judgment and order dated 17.09.2025

impugned in the instant appeal is hereby set-aside. Appellant/applicant-Danish Malik is directed to be released immediately on bail on his executing personal bond and furnishing two reliable sureties, each of the like amount to the satisfaction of the Court concerned in FIR No.21 of 2024, if he is not wanted in any other criminal case. The observations made are strictly for deciding this Criminal Appeal and shall not have any bearing on the merit of the trial.

14. Pending application(s), if any, stands disposed of accordingly.

(Pankaj Purohit, J.) **(Manoj Kumar Tiwari, J.)**

08.12.2025

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